

Exhibit 5

Page 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----)
)
CF 135 FLAT LLC, CF 135)
WEST MEMBERS LLC)
and THE CHETRIT GROUP, LLC,)
) Case No.
) 15-cv-05345-AJN
)
Interpleader Plaintiffs,)
)
-against-)
TRIADOU SPV S.A., CITY OF ALMATY,)
a foreign city, and BTA Bank,) AMENDED CROSS-
) CLAIMS
Interpleader Defendants.)
)
)
-----)
)
CITY OF ALMATY, KAZAKHSTAN)
and BTA BANK,)
)
Crossclaim Plaintiffs,)
)
)
-against-)
)
MUKHTAR ABLYAZOV,)
VIKTOR KHRAPUNOV,)
ILYAS KHRAPUNOV,)
TRIADOU SPV S.A.,)
and FBME BANK LTD.,)
)
Crossclaim Defendants.)
)
-----)

VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION

of
MR. NICOLAS BOURG (DAY ONE)
On Monday, 11th September 2017

1

2 (Back on the record at 10.33 a.m.)

3 THE VIDEOGRAPHER: We are back on
4 the record. The time is 10.33.

5 BY MR. SKINNER:

6 Q. Mr. Bourg, before we take our break
7 you had testified that you entered into a second
8 agreement in 2017; correct?

9 A. Yes.

10 (Exhibit 2 was marked for identification)

11 Q. We put in front of you a document
12 that we have marked as Bourg Exhibit 2. Is this
13 the second release that you were referring to?

14 A. Yes.

15 Q. What are the differences, if any,
16 between the April 2017 release and the May 2015
17 agreement?

18 A. Well, the first release has to do
19 with the real estate business in the US, and the
20 second one is with the Niel Company and it is done
21 in accordance with UK law.

22 Q. Earlier, you testified that the
23 Niel company was investing in non-real estate
24 assets in Africa; is that right?

25 A. Yes.

1

2 Q. Is it your understanding, then,
3 that the April 2017 release relates to investments
4 that related to those investments?

5 A. Relates to investments?

6 Q. Relates to those investments.

7 A. Yes.

8 Q. Who were the parties to the April
9 2017 agreement?

10 A. The BTA Bank, Laurent Foucher, my
11 associate, and myself.

12 Q. Laurent Foucher is your associate,
13 you say?

14 A. Yes.

15 Q. How are you associated with
16 Mr. Foucher?

17 A. We are 50/50 associates in the Niel
18 company.

19 Q. Does the April 2017 release, excuse
20 me, the April 2017 agreement also provide you with
21 a release?

22 A. Yes.

23 Q. Does it provide you with any other
24 benefits?

25 A. Yes, it reimburses the fees which

1

2 Niel, the Niel Company, incurred in this business.

3 Q. So the other parties to this

4 agreement agreed to reimburse you for your fees?

5 MR. HASSID: Objection.

6 A. Yes, the fees incurred by this

7 business.

8 BY MR. SKINNER:

9 Q. What do you mean by "this
10 business"?

11 A. Everything which has to do with the
12 recovery of assets.

13 Q. Do you receive any other benefits
14 other than the release and the reimbursement of
15 fees under the April 2017 agreement?

16 A. Niel Company receives the 30% of
17 the interest if the assets are found and 70% are
18 received by BTA.

19 Q. Have you received any reimbursement
20 of expenses under this agreement?

21 A. Yes.

22 Q. Roughly how much have you been
23 reimbursed for your expenses?

24 A. €562,000.

25 Q. Who paid the €562,000?

1

2 A. BTA Bank.

3 Q. Have you been paid anything by BTA
4 Bank in addition to the €562,000 for your fees and
5 expenses?

6 A. Yes.

7 Q. What else have BTA Bank paid you?

8 A. They bought an option for 50% in
9 Telecom Central Africa.

10 Q. What are Telecom Central Africa?

11 A. Telecel Central Africa, sorry.

12 Q. What is Telecel central Africa?

13 A. It is a Telecom operator, which is
14 owned by Niel.

15 Q. When did BTA purchase this option?

16 A. In April 2017.

17 Q. How much did they pay for it?

18 A. €300,000.

19 Q. What is your understanding of why
20 BTA was willing to pay \$300,000[sic] for this euro
21 -- I mean, excuse, for this option?

22 MR. HASSID: Objection.

23 A. They were interested in the capital
24 of this company because it is profitable, as of
25 today, and they want a part of the profits.

1

2 Q. Did they exercise the option?

3 THE INTERPRETER: Could you explain
4 to me exactly what you mean by "exercise option"?

5 THE WITNESS: I know what it is, it
6 is okay.

7 THE INTERPRETER: Okay. As far as
8 I know, no.

9 BY MR. SKINNER:

10 Q. Do they still have a right to
11 purchase a 50% interest pursuant to the option
12 agreement that they entered into with you, or
13 excuse me, with Niel?

14 A. We are positive to sell them the
15 50%, but the circumstances have changed since that
16 time.

17 Q. And how much -- withdrawn. Was
18 there an agreement as to how much they would pay
19 for their 50% interest pursuant to the option
20 agreement that they had entered into with you?

21 A. Yes, I think at the time,
22 approximately, it was a question of €2,200,000.

23 Q. But they never, in fact, made that
24 investment?

25 A. No.

1

2 Q. When you met with me and my
3 colleagues over the weekend, did you do so because
4 of your obligations under either of these release
5 agreements?

6 A. No.

7 Q. Do the benefits that you receive
8 under the release agreements that we have marked
9 as exhibits Bourg 1 and 2 depend in any way on
10 what you say when you testify here today?

11 A. No.

12 Q. Has anyone told you what to say in
13 your testimony today?

14 A. No.

15 Q. Prior to Saturday, had you ever met
16 me before?

17 A. No.

18 Q. Had you met my colleague,
19 Mr. Boyle, before?

20 A. Yes, I believe that I met him once
21 at the beginning of this whole business.

22 Q. Had you met with any other lawyers
23 that work at my law firm, Boies Schiller?

24 A. Yes.

25 Q. What other lawyers from my firm

1

2 have you met?

3 A. Mr. Schwartz and Mr. Jackson.

4 Q. When did you meet Mr. Schwartz and
5 Mr. Jackson?

6 A. Before and during the
7 cross-examination in New York.

8 Q. That was before and during the
9 testimony that you gave in the prior proceeding in
10 front of judge in this case?

11 A. Yes.

12 Q. Have either Mr. Schwartz,
13 Mr. Jackson or Mr. Boyle ever told you what to say
14 in connection with your testimony in this matter?

15 A. No.

16 Q. Am I correct that the previous
17 testimony you offered was in May of 2016?

18 A. Yes, 2015.

19 Q. 2016, I said.

20 A. Oh, I'm sorry 2016. Are you
21 talking about the cross-examination?

22 Q. Yes, when you testified in court?

23 A. I think it was 2016, May. Yes, May
24 2016.

25 Q. Have you had any interaction with

1

2 any lawyers from my firm between May of 2016 and
3 this past weekend when we met with you prior to
4 your deposition today?

5 A. No.

6 Q. Have you had any interaction with
7 Arcanum during that time period?

8 A. With? No.

9 Q. I would like to direct your
10 attention, Mr. Bourg, back to the business
11 ventures you entered into with Ilyas Khrapunov in
12 2011. You testified earlier that there were
13 basically two types of business that you did with
14 him, one real estate investments and one non-real
15 estate investments; is that correct?

16 A. Yes.

17 Q. So, let's focus on the real estate
18 investments first, okay?

19 THE WITNESS: Oui.

20 BY MR. SKINNER:

21 Q. Did you help in making real estate
22 investments in your business dealings with Mr.
23 Khrapunov?

24 A. (Through the Interpreter) Yes.

25 Q. How did you help?